

National Transportation Safety Board

§ 804.5

804.8 Changes following public announcement.

804.9 Transcripts, recordings, or minutes of closed meetings.

804.10 Availability and retention of transcripts, recordings, and minutes, and applicable fees.

AUTHORITY: Government in the Sunshine Act, Pub. L. 94-409, 90 Stat. 1241 (5 U.S.C. 552b); Independent Safety Board Act of 1974, Pub. L. 93-633, 88 Stat. 2166 (49 U.S.C. 1901 et seq.).

SOURCE: 42 FR 13284, Mar. 10, 1977, unless otherwise noted.

§ 804.1 Applicability.

(a) This part implements the provisions of the Government in the Sunshine Act (5 U.S.C. 552b). These procedures apply to meetings, as defined herein, of the Members of the National Transportation Safety Board (NTSB).

(b) Requests for all documents other than the transcripts, recordings, and minutes described in § 804.9 shall continue to be governed by part 801 of the NTSB regulations (49 CFR part 801).

§ 804.2 Policy.

It is the policy of the NTSB to provide the public with the fullest practicable information regarding the decisionmaking processes of the Board, while protecting the rights of individuals and the ability of the Board to discharge its statutory functions and responsibilities. The public is invited to attend but not to participate in open meetings.

§ 804.3 Definitions.

As used in this part: *Meeting* means the deliberations of three or more Members where such deliberations determine or result in the joint conduct or disposition of official NTSB business, and includes conference telephone calls otherwise coming within the definition. A meeting does not include:

(a) Notation voting or similar consideration of business, whether by circulation of material to the Members individually in writing or by a polling of the Members individually by telephone.

(b) Deliberations by three or more Members (1) to open or to close a meeting or to release or to withhold information pursuant to § 804.6, (2) to call a meeting on less than seven days' notice

as permitted by § 804.7(b), or (3) to change the subject matter or the determination to open or to close a publicly announced meeting under § 804.8(b).

(c) An internal session attended by three or more Members for which the sole purpose is to have the staff brief the Board concerning an accident, incident, or safety problem.

Member means an individual duly appointed and confirmed to the collegial body, known as "the Board," which heads the NTSB.

National Transportation Safety Board (NTSB) means the agency set up under the Independent Safety Board Act of 1974.

[42 FR 13284, Mar. 10, 1977, as amended at 42 FR 31794, June 23, 1977]

§ 804.4 Open meetings requirement.

Members shall not jointly conduct or dispose of agency business other than in accordance with this part. Except as provided in § 804.5, every portion of every meeting of the Board shall be open to public observation.

§ 804.5 Grounds on which meetings may be closed or information may be withheld.

Except in a case where the Board finds that the public interest requires otherwise, a meeting may be closed and information pertinent to such meeting otherwise required by §§ 804.6, 804.7, and 804.8 to be disclosed to the public may be withheld if the Board properly determines that such meeting or portion thereof or the disclosure of such information is likely to:

(a) Disclose matters that are (1) specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy, and (2) are in fact properly classified pursuant to such Executive Order;

(b) Relate solely to the internal personnel rules and practices of the NTSB;

(c) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552): *Provided*, That such statute (1) requires that the matters be withheld from the public in such a manner as to leave no discretion

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on the issue, or (2) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Involve accusing any person of a crime, or formally censuring any person;

(f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:

(1) Interfere with enforcement proceedings;

(2) Deprive a person of a right to a fair trial or an impartial adjudication;

(3) Constitute an unwarranted invasion of personal privacy;

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(5) Disclose investigative techniques and procedures; or

(6) Endanger the life or physical safety of law enforcement personnel;

(h) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(i) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed action of the NTSB: *Provided*, That the NTSB has not already disclosed to the public the content or nature of its proposed action or is not required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(j) Specifically concern the Board's issuance of a subpoena, or the NTSB's

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participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the NTSB of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

§ 804.6 Procedures for closing meetings, or withholding information, and requests by affected persons to close a meeting.

(a) A meeting shall not be closed, or information pertaining thereto withheld, unless a majority of all Members votes to take such action. A separate vote shall be taken with respect to any action under § 804.5. A single vote is permitted with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular subject matters and is scheduled to be held no more than thirty days after the initial meeting in such series. Each Member's vote under this paragraph shall be recorded and proxies are not permitted.

(b) Any person whose interest may be directly affected if a portion of a meeting is open may request the Board to close that portion on any of the grounds referred to in § 804.5 (e), (f), or (g). Requests, with reasons in support thereof, should be submitted to the General Counsel, National Transportation Safety Board, 800 Independence Avenue, SW., Washington, DC 20594. On motion of any Member, the Board shall determine by recorded vote whether to grant the request.

(c) Within one working day of any vote taken pursuant to this section, the NTSB shall make available a written copy of such vote reflecting the vote of each Member on the question and, if a portion of a meeting is to be closed to the public a full written explanation of its action closing the meeting and a list of all persons expected to attend and their affiliation.

(d) Before every closed meeting, the General Counsel of the NTSB shall publicly certify that, in his or her opinion,